

I, James T. Waggy, being first duly sworn, do hereby depose and state as follows:

**INTRODUCTION AND AGENT BACKGROUND**

1. I make this affidavit in support of an application for a search warrant under Federal Rule of Criminal Procedure 41 to conduct a search of physical evidence that includes non-destructive forensic examinations. The physical evidence includes one camouflage plate carrier and its bullet-proof plate. The physical evidence is currently in the custody of the defendant's counsel in Charleston and is ready to be transferred to my custody. For the reasons stated below, there is probable cause to believe that evidence relating to violations of federal law will be found upon a forensic test of the physical evidence, including violations of 18 U.S.C. § 1347 (health care fraud).

2. I am a Special Agent of the Federal Bureau of Investigation (FBI) and have been so employed since September 2002. I am currently assigned to the Pittsburgh Field Office, Huntington, West Virginia Resident Agency. Prior to my employment with the FBI, I was employed as a police officer with the Charleston, West Virginia Police Department for over nine years, including approximately five years as a detective. During my employment with the FBI, I have participated in many different types of criminal investigations including but not limited to health care fraud, financial institution fraud, fraud against the government, kidnapping, bank robbery, and other violent crimes as well as matters relating to violent street gangs and criminal drug enterprises. In my capacity as an FBI Agent, I have received specialized training and have gained experience through everyday work in the investigation of health care fraud and other federal offenses.

3. The facts and information set forth below come from my personal observations, my training and experience, and information obtained from other agents, law enforcement officers,

and witnesses. This Affidavit is intended to show that there is sufficient probable cause for the requested warrant and does not set forth all my knowledge about this investigation.

### **PROBABLE CAUSE**

4. This investigation was initiated on January 12, 2022, following information reported to the FBI National Threat Operations Center that the defendant Gary SAWYERS (hereinafter, "SAWYERS") may have engaged in an act of stolen valor by obtaining a fraudulent Purple Heart for benefits from the Department of Veterans Affairs (hereinafter, "the VA"). Michael Cummings (hereinafter "Cummings"), who was SAWYERS' commanding officer while deployed to Iraq, told the FBI that SAWYERS fraudulently obtained a Purple Heart. According to Cummings, SAWYERS sustained a self-inflicted gunshot wound after he made modifications to his military issued M4 rifle. SAWYERS' unit investigated and found that SAWYERS inappropriately filed the sear on his military issued M4 rifle. The filed sear caused the weapon to go off on its own during a convoy mission outside the wire. According to Cummings, the convoy was not under enemy attack when SAWYERS accidentally shot himself. SAWYERS shot himself in the leg several times and was medevacked from Iraq.

5. SAWYERS is a U.S. Army veteran with service from August 8, 2002, to April 26, 2007. SAWYERS currently has a 100% service-connected disability rating from the VA for several issues, primarily caused by the accidental shooting. A consult with Veterans Benefits Administration (hereinafter, "the VBA") revealed that if SAWYERS' injuries resulted from his own negligence, SAWYERS is not entitled to receive VA compensation benefits for those injuries.

6. On January 19, 2022, Special Agent (SA) Ashley Archibald, FBI, and SA Juan Sanin Prieto, VA Office of Inspector General (OIG) interviewed Cummings. Cummings stated that he was a member of the 1-150th Armor Battalion, 30th Armored Brigade Combat Team, 1st

Infantry Division (hereinafter, "1-150th") during his deployment to Mandali, Iraq in 2004. Cummings stated SAWYERS was also a member of the 1-150th and was also deployed with him to Iraq in 2004. Cummings had recently learned that SAWYERS was awarded a Purple Heart for injuries he sustained during an incident on April 19, 2004. Cummings knew this incident well and stated that SAWYERS was not injured during enemy attack. Instead, Cummings stated that SAWYERS accidentally shot himself after he made illegal modifications to his government issued M4 rifle. Cummings stated that SAWYERS filed down the sear of his M4 rifle to make it fire fully automatic.

7. After learning of SAWYERS' Purple Heart, Cummings reached out to several members of the 1-150th and asked them if they could provide written statements with their account of what happened to SAWYERS. Cummings provided law enforcement with written statements from himself, Jason Scarboro, Thomas Hughes, Samuel Ward, Gregory Wilcoxon, and Clifford Brackman.

8. On January 20, 2022, SA Sanin Prieto spoke with Lieutenant Colonel (LTC) Shane Murphy, Inspector General, U.S. Army Human Resources Command (HRC), regarding this complaint. LTC Murphy relayed that SAWYERS is no longer in the military, and he is considered a civilian. LTC Murphy searched SAWYERS' military record and found that SAWYERS was awarded a Purple Heart for an incident that occurred on April 19, 2004, however, LTC Murphy stated that SAWYERS' unit, the 1-150th, did not recommend him for the Purple Heart award. Instead, LTC Murphy found that the medical command, where SAWYERS received medical treatment, recommended him for the award.

9. On January 20, 2022, SA Sanin Prieto contacted Sheila Floyd (Floyd), Super Senior Veterans Service Representative and Congressional Liaison, VBA VARO Huntington and requested a review of SAWYERS' VBA file.

10. On January 21, 2022, Floyd informed SA Sanin Prieto that there is no official line of duty (LOD) determination in SAWYERS' VA file, only an unofficial LOD determination. Floyd stated that if SAWYERS was found to be negligent, and that was the cause of his injuries, SAWYERS would not have been entitled to any VBA or VHA benefits for injuries resulting from his accidental self-inflicted gunshot wounds on April 19, 2004. Floyd stated that VA could take away any benefit that SAWYERS is in receipt of because of those injuries. Floyd stated that SAWYERS has a service-connected rating of 100%, however, if found that his injuries resulted from his own negligence, SAWYERS rating could be lowered to approximately 40%. Floyd stated that VBA will need a copy of the official LOD determination and/or any evidence that supports the shooting occurred due to SAWYERS' negligence.

11. On January 27, 2022, SA Archibald received a copy of the 15-6 investigation conducted by the U.S. Army. The 15-6 investigation included pictures of modified components of SAWYERS' M4 rifle.

12. On January 28, 2022, SA Sanin Prieto conducted a review of the 15-6 investigation. The investigation found that SAWYERS' M4 rifle was tampered with to produce a fully automatic weapon. This tampering resulted in the weapon's malfunction, which caused the accidental shooting. Although there was not direct evidence to indicate that SAWYERS was the person who tampered with the M4, other evidence suggests that SAWYERS was the person who did it.

13. On February 2, 2022, SA Archibald and SA Sanin Prieto received an email from COL Greg Leiphart, Chief, Soldier Programs & Services Division, Army HRC, with records of a

medical incident report on an injury that SAWYERS sustained on April 19, 2004. The documents highlighted that the injury was **non-hostile**, and it was the result of SAWYERS' accidental discharge of his weapon. COL Leiphart stated in the email that based on these records, Army HRC is ready to amend SAWYERS' record to remove his Purple Heart, pending the conclusion of the VA OIG and FBI investigation.

14. On February 10, 2022, SA Archibald and SA Sanin Prieto interviewed Jason Scarboro (hereinafter, "Scarboro"). Scarboro stated he was a member of the 1-150th and he was deployed to Iraq with SAWYERS in 2004. Scarboro was the gunner in SAWYERS' Humvee the day SAWYERS accidentally shot himself. Scarboro stated that also in the Humvee with SAWYERS were Aaron Ward, the driver, and Johnathan Rode (hereinafter, "Rode"), a medic assigned to the military convoy. Scarboro stated that as they were leaving Forward Operating Base (hereinafter, "FOB") Roughrider, he heard loud automatic fire. Scarboro initially thought the convoy was under attack, so he quickly scanned the area with his machine gun. Within seconds, Scarboro realized that the convoy was not under attack and as he looked down, he saw SAWYERS' weapon firing rounds between SAWYERS' legs.

15. Scarboro stated that SAWYERS shot himself in the leg. Scarboro and others provided medical treatment to SAWYERS before he was medevacked. Scarboro and Rode conducted a complete body scan and pat down of SAWYERS to assess his injuries. Scarboro stated that SAWYERS was not shot anywhere else but had a small cut on his chin after the butt of the weapon hit him while it was firing. Scarboro stated that SAWYERS filed the sear on his M4 rifle to make it fire fully automatic. Additionally, Scarboro stated SAWYERS also modified the Humvee's .50 caliber machine gun.

16. On February 14, 2022, SA Archibald and SA Sanin Prieto conducted a telephonic interview of Rode. Rode stated he was the medic assigned to SAWYERS' convoy and he rode in the same Humvee as SAWYERS. Rode stated that SAWYERS' incident occurred as they were leaving their FOB in Mandali, Iraq. Rode stated that SAWYERS' M4 went off in automatic fashion as he was sitting in the Humvee. Rode explained that the M4 is only supposed to fire in one, two, or three round bursts per trigger pull, however, SAWYERS' M4 fired on full auto. Rode initially thought the convoy was under enemy attack but quickly realized it was SAWYERS' weapon going off on its own. Rode and Scarboro pulled SAWYERS out of the Humvee and started to render medical care to SAWYERS. Rode stated SAWYERS had three or four entry wounds in his leg and his ankle was "blown off." Rode stated SAWYERS was screaming in pain and he injected him with morphine. Rode stated that SAWYERS was not shot by an enemy and their convoy was not under attack. Rode thought it was a miracle that no one else was hurt. Rode stated he was recommended for a Bronze Star for saving SAWYERS' life, but his award was denied.

17. On February 17, 2022, Rode sent SA Sanin Prieto, via email, a copy of his DD Form 638 –Recommendation for Award. The form documented the recommendation made to the Commander of the 1st Infantry Division of the U.S. Army to award the Bronze Star Medal to Rode for the actions he took to save SAWYERS' life, after he accidentally shot himself, on April 19, 2004. In the form, SAWYERS' incident is referred to as an "accidental discharge" and not enemy fire.

18. On February 23, 2022, SA Brandon Lightner and SA Sanin Prieto interviewed Samuel Aaron Ward (hereinafter, "Ward"). Ward stated he was the driver of the Humvee in which SAWYERS accidentally shot himself. Ward stated that while they were in Kuwait, before they arrived at Mandali, Iraq, SAWYERS called everyone into his cot and showed them how he filed

the sear on his M4 rifle. Ward remembered SAWYERS took his weapon apart and showed everyone the filed sear. SAWYERS still had the file he used next to his cot. The day of the incident, Ward stated he initially thought they were being ambushed but he looked over to his right and saw SAWYERS' M4 bouncing up and down between his legs, and the butt of the M4 rifle hitting SAWYERS in the chin repeatedly. Ward stopped the Humvee after he realized they were not under attack, and it was SAWYERS' weapon going off. Ward stated SAWYERS shot himself in the leg and was later medevacked. Ward stated SAWYERS was conscious while he was receiving medical care.

19. On February 23, 2022, SA Lightner and SA Sanin Prieto interviewed Gregory Wilcoxon (hereinafter, "Wilcoxon"). Wilcoxon stated he was the Battalion Commander of the 1-150th. The day SAWYERS accidentally shot himself, Wilcoxon recalls being radioed by the Tactical Operations Center (TOC) stating there was enemy contact at the gate. Approximately 20 minutes later, TOC radioed Wilcoxon again and stated the base was not under attack and that SAWYERS shot himself in the leg during an accidental discharge. Wilcoxon ordered a 15-6 investigation into the shooting. Wilcoxon recalls that the 15-6 investigation disclosed that SAWYERS' weapon was modified, which caused the weapon to malfunction. Wilcoxon stated he did not recommend SAWYERS for a Purple Heart.

20. Continuing February 23, 2022, SA Lightner and SA Sanin Prieto interviewed Master Sergeant (MSG) Kenneth Eugene Blevins. MSG Blevins is still serving in the West Virginia Army National Guard. While deployed to Iraq in 2004, MSG Blevins was FOB Roughrider's senior inspector of weapons and military equipment. MSG Blevins stated that shortly after SAWYERS accidentally shot himself, Brackman and Hughes showed up at the armory with SAWYERS' M4 and asked MSG Blevins to inspect the weapon. MSG Blevins inspected the



weapon and found a filed sear, filed burst disconnect, and a broken spring. MSG Blevins stated the weapon would fire on its own if the selector was either touched or bumped against something. MSG Blevins stated that after the incident, he was tasked with inspecting all weapons in FOB Roughrider. MSG Blevins conducted inspections of approximately 800 soldiers' weapons and found that only SAWYERS' M4, and Scarboro's .50 caliber machine gun had unauthorized modifications. Both weapons were modified by SAWYERS.

21. Continuing February 23, 2022, SA Lightner and SA Sanin Prieto interviewed Chief Warrant Officer (CW) Richard Dale Hylton. CW Hylton was MSG Blevins' supervisor while they were deployed to Iraq in 2004. CW Hylton corroborated information that MSG Blevins inspected SAWYERS' M4 rifle after SAWYERS accidentally shot himself. CW Hylton stated that MSG Blevins took the weapon apart in front of Hughes and showed him the internal components. MSG Blevins laid out the internal components from SAWYERS' weapon next to the components of an identical fully functioning M4 rifle. When comparing the components of each weapon, it became apparent that SAWYERS' weapon had a filed sear and a modified or cut spring. CW Hylton stated he took pictures of the components and provided the pictures to Hughes as part of an ongoing 15-6 investigation.

22. On February 24, 2022, SA Lightner and SA Sanin Prieto interviewed Eric Griffith, Motor Vehicle Operator, VA Medical Center (VAMC) Beckley, WV. Griffith is a veteran who also deployed with SAWYERS to Iraq in 2004. Griffith stated he was a friend of SAWYERS but no longer has any contact with him. Griffith stated SAWYERS was the best man at his wedding. After SAWYERS was medevacked for accidentally shooting himself, Griffith did not see SAWYERS again. He heard about SAWYERS for the first time after he went home for rest and recuperation in the fall of 2004, when Griffith ran into SAWYERS' father at a local Chinese



restaurant. SAWYERS' father told Griffith that SAWYERS was recovering from his wounds at Walter Reed Medical Center in Bethesda, MD. He also told Griffith that SAWYERS was shot in the chest and asked him if they caught the guy who shot SAWYERS.

23. Griffith also ran into SAWYERS at VAMC Beckley in 2014. After they greeted each other, SAWYERS asked Griffith, "Did you get the guy who shot me?" "I got shot in the chest with a 7.62." SAWYERS told Griffith that his vest stopped the 7.62 round and saved his life. Griffith stated that when he was tasked with inspecting SAWYERS' gear after he was medevacked. Griffith never found SAWYERS' bulletproof vest nor his helmet.

24. On February 24, 2022, SA Sanin Prieto received an email from Wilcoxon containing a spreadsheet with all military members who received awards from the 1-150th during their deployment to Iraq. SA Sanin Prieto conducted a review of the spreadsheets and found that SAWYERS was not listed as a Purple Heart recipient or the recipient of any other award from the 1-150th.

25. On March 14, 2022, SA Archibald and SA Sanin Prieto interviewed Thomas Hughes (hereinafter, "Hughes") telephonically. Hughes stated he was assigned to conduct a 15-6 investigation into SAWYERS' accidental shooting on April 19, 2004. Hughes stated that Brackman helped him with the 15-6 investigation. Hughes referred to the 15-6 investigation as "cut and dry." Hughes explained that SAWYERS' M4 had a filed sear and several damaged components. Hughes did not interview SAWYERS during the 15-6 investigation because SAWYERS was medevacked from Iraq and never returned. Hughes also stated that an interview of SAWYERS was not necessary, however, because the cause of the injury was apparent.

26. On March 28, 2022, SA Archibald and SA Sanin Prieto conducted a telephonic interview of Clifford Brackman (hereinafter, "Brackman"). Brackman stated SAWYERS was a

squad leader of the Humvee he was in when he accidentally shot himself. SAWYERS rode “shotgun” in the Humvee. Brackman stated SAWYERS shot himself shortly after they left their base in Iraq to conduct a mission. Brackman was not part of the convoy, but he went to the TOC and heard radio communications between convoy crews and the TOC stating that a soldier was hurt at the gate. Brackman stated that no longer than five minutes into learning that someone was shot at the gate, it was clear that the shooting was accidental and that no one was under attack. Brackman later helped Hughes with the 15-6 investigation. During the inspection of the weapon for the 15-6 investigation, MSG Blevins told Brackman that SAWYERS’ M4 sear was filed down and modified, which caused the weapon to malfunction and fire on its own. MSG Blevins told Brackman that SAWYERS’ weapon would go off just by touching the selector switch.

27. On April 20, 2022, your Affiant and SA Sanin Prieto interviewed Anthony Criner (hereinafter, “Criner”). Criner stated he was deployed to Iraq at the same time as SAWYERS. Criner stated they both slept in the same tent and their cots were two feet apart. One day, Criner walked into the tent and saw SAWYERS had a large file in his hand and all trigger components from SAWYERS’ M4 rifle laying on his cot. Criner asked SAWYERS what he was doing with the file. SAWYERS told Criner that he wanted his M4 “full auto back.” Sometime in 2006, Criner ran into SAWYERS at a K-Mart in West Virginia and SAWYERS told Criner he was shot in the chest during a rescue mission in Afghanistan. SAWYERS told Criner that while he was receiving medical care in Germany, someone found a bullet lodged in the ceramic plate of his bullet proof vest. Additionally, Criner stated that his mother works with one of SAWYERS’ neighbors, and she has heard that SAWYERS tells people he was shot in the chest during a rescue mission in Afghanistan.

28. On August 9, 2022, SA Sanin Prieto received the final loss calculations for VBA and VHA, which were documented in an MFR. The total loss to VA resulting from SAWYERS' false statements was calculated to be an estimated \$607,077.64.

29. On July 2, 2024, SAWYERS through counsel disclosed several photographs depicting the plate carrier and body armor SAWYERS claimed to be wearing on the day of the incident, copies of which are attached hereto as Exhibits 1-5.













30. On September 4, 2024, Ed Hinchey (hereinafter, "Hinchey"), an employee of the body armor manufacturing company Safariland Group, inspected the body armor allegedly worn by SAWYERS during the incident in question. Safariland Group is a manufacturer of body armor and was involved in the manufacture and supply of body armor to West Virginia National Guard soldiers in 2003 and 2004. Hinchey is an expert in the field of body armor. On September 4, 2024, Hinchey inspected SAWYERS' plate carrier and body armor plate in the presence of your Affiant and other case agents, as well as defendant's counsel and two Assistant United States Attorneys. Upon his inspection, Hinchey indicated that evidence still remains on and in the plate carrier and body armor plate and described forensic testing which would provide the type and origin of the bullet which struck the armor and can indicate the range of the weapon which fired the projectile

based on burned or unburned powder around the bullet hole. Hinchey inspected the items in the Federal Public Defender's Office in the Federal Courthouse in Charleston, West Virginia. Hinchey also indicated that the testing would be non-destructive and that the testing would only take a couple of hours once it is transported to the proper testing facility.


### **CONCLUSION**

31. Based upon my knowledge, training, and experience, I believe there is probable cause to believe that evidence of crimes, including violations of 18 U.S.C. §1347, will be found upon a forensic examination of the plate carrier and body armor plate described above. It is the information and belief of the Affiant that the scientific testing of SAWYERS plate carrier and body armor plate will prove the type of ammunition which struck the item and possibly the range of the source firearm. Additionally, the analysis will reveal what physical impact, if any, SAWYERS may reasonably have suffered as a result of the firing. These test results, in turn, relate directly to the statements made by SAWYERS to medical professionals regarding any wounds he received to his chest during the incident on April 19, 2004.



32. Special Agent Waggy, having signed this affidavit under oath as to all assertions and allegations contained herein, states that its contents are true and correct to the best of my knowledge, information, and belief.

Further the Affiant sayeth naught.

  
James T. Waggy, Special Agent, FBI

SUBSCRIBED AND SWORN before me this 6th day of September, 2024.





Omar J. Aboulhosn  
United States Magistrate Judge